

REMARKS

Initially, Applicant appreciates the indication of allowable subject matter. In order to expedite prosecution, Applicant has cancelled the remaining claims so that only those indicated allowable are currently pending. Applicant reserves the right to re-present the cancelled claims, variations of the claimed subject matter, as well as any unclaimed subject matter in a subsequently filed continuing application without prejudice or disclaimer. Furthermore, numerous issues were raised in the above referenced Office Action that are rendered moot with respect to the pending claims. Applicant does not acquiesce to any issue raised, statement made, rejection or objection made in the above Office Action whether or not successfully addressed herein.

Claims 19 and 20 were withdrawn by the Examiner in view of the Election of Species requirement. Applicant respectfully asserts that since these claims depend from claim 18, which has been indicated allowable, that they are properly reinstated and passed to issue.

With respect to the Election of Species requirement, the Examiner has made a number of statements in paragraphs 1-3 of the Office Action in support of making the requirement Final. Applicant continues to traverse the requirement. In addition, Applicant asserts that at least some of the statements made are beyond the scope of legitimate support for the Examiner's position. Specifically, the claims are to be read as whole and in light of the specification, but the claims define the invention. The specification provides enabling disclosure and embodiments, but not a series of limitations that may be imported into the claims at the Examiner's discretion. Applicant respectfully asserts that the Examiner has improperly attempted to define Applicant's invention based upon selected reading of portions of the specification. Applicant reiterates that by expediting prosecution, no acquiescence on any such issue is intended or offered and Applicant reserves the right to address and traverse these issues.

The Drawings were objected to and corrected drawings are included herewith. The corrected drawings provide for the reference characters indicated as missing. With respect to FIG. 13, the setting of flags has been modified to maintain

consistency. Applicant respectfully asserts that this is non-limiting. That is, flags may be set in accordance with the teachings of the specification and are not limited by the illustrated embodiments.

Certain claims were rejected under 35 USC 102 and/or 103. Applicant respectfully traverses the merits of these rejections; however, they are rendered moot in that the currently pending claims have been indicated allowable. Bornzin et al., for example, does not teach, contrary to the Examiner's assertions, a method of selectively providing cardiac pacing with an implantable medical device comprising setting a flag during a given cardiac cycle in response to ventricular activity; and precluding a ventricular pacing pulse during a current cardiac cycle if the flag is present at the onset of the current cardiac cycle, as set forth in claim 1. Bornzin addresses atrial tracking; that is, when to provide or permit ventricular activity at high atrial rates. Thus, a maximum mean rate interval (MMRI) is provided. A determination is made as to whether the atrial rate is excessive; if not, ventricular pacing may be provided. The reference does not teach determining whether to provide ventricular pacing in a current cardiac cycle based upon the presence or absence of a flag that is set in a previous cardiac cycle in response to the presence ventricular activity. Baker, which is subsequently cited, does not provide for the deficiencies of Bornzin. Amblard et al. is also subsequently cited, but is rendered moot by Applicant's priority claim, which despite the Examiner's assertion to the contrary is proper as to the common subject matter. The combination of Amblard with Bornzin is ineffective, as even if combined, the claimed invention is not realized. For these and other reasons, the art based rejections proffered in the above referenced Office Action are unsupportable and as such traversed by Applicant.

As the pending claims are in condition for allowance, notice of the same is respectfully requested. Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

March 2, 2007
Date

/Daniel G. Chapik/
Daniel G. Chapik
Reg. No. 43,424
(763) 514-3066
Customer No. 27581